

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
W. R. GRACE & CO., <i>et al.</i>)	Case No. 01-1139 (JKF)
)	(Jointly Administered)
)	
Debtors.)	Document No. _____
)	
)	Relates to Document Nos. 26154, 26155
)	Hearing Date: February __, 2011 @ __: __ .m.
)	Response Deadline: February __, 2011 @ __: __ .m.

**PRECAUTIONARY MOTION FOR EXTENSION OF TIME TO FILE OBJECTIONS TO
OR APPEAL FROM MEMORANDUM OPINION AND RECOMMENDED FINDINGS OF
FACT AND CONCLUSIONS OF LAW OF BANKRUPTCY JUDGE**

AXA Belgium, as successor to Royale Belge SA (“AXA Belgium”) and the other moving parties listed in the signature block to this Precautionary Motion (the “Movants”), move this Court pursuant to Bankruptcy Rules 8002(c) and 9033(c) for an Order extending the time by two weeks to appeal or otherwise file objections to the Memorandum Opinion Regarding Objections to Confirmation of First Amended Joint Plan of Reorganization and Recommended Supplemental Findings of Fact and Conclusions of Law (Dkt. 26154) (the “Memorandum Opinion”) and Recommended Findings of Fact, Conclusions of Law and Order Regarding Confirmation of First Amended Joint Plan of Reorganization as Modified Through December 23, 2010 (Dkt. No. 26155) (the “Recommended Findings”). In support of this Motion, Movants represent as follows:

1. By Order dated January 31, 2011 this Court transmitted the Memorandum Opinion and Recommend Findings to the United States District Court for the District of Delaware.
2. The Memorandum Opinion and Recommended Findings were served by Debtors on Movants on January 31, 2011.

3. In Footnote 1 to the Memorandum Opinion, this Court states as follows:

This court's jurisdiction was not at issue. This Memorandum Opinion constitutes our findings of fact and conclusions of law with respect to the remaining objections to confirmation. The Court has jurisdiction under 28 U.S.C. §157 and §1334 in this core proceeding. See 28 U.S.C. §157(b)(2).

Memorandum Opinion, p.1, n.1. On page 79 of the Memorandum Opinion, this Court states as follows:

All objections not addressed herein having been resolved, and the court finding no merit to those addressed herein, the court recommends that the District Court confirm Plan Proponents' Amended Joint Plan. Additional Recommended Findings of Fact and Conclusions of Law and a proposed order will be separately issued.

Memorandum Opinion, p.79.

4. In the Recommended Findings, this Court states as follows:

Wherefore the court respectfully recommends that the United States District Court for the District of Delaware approve these Recommended Findings of Fact and Conclusions of Law and Memorandum Opinion Regarding Objections to Confirmation of First Amended Joint Plan of Reorganization and Recommended Supplemental Findings of Fact and Conclusions of Law. We further recommend that the District Court confirm the Joint Plan and issue the 524(g) injunction.

Recommended Findings, p. 77.

5. While it does not appear that this Court has entered any final order from which an appeal can be taken pursuant to 28 U.S.C. § 158(a)(1), Movants are concerned that a failure to file a Notice of Appeal with respect to the Memorandum Opinion and the Recommended Findings could be used to argue that Movants waived the right to appeal. This concern arises from the statement in footnote 1 of the Memorandum Opinion that this Court has "core jurisdiction" and thus is capable of entering final orders with respect to confirmation of the First Amended Joint Plan of Reorganization

as Modified Through December 23, 2010 (Dkt. 25931 & 25936) (the “Plan”). Pursuant to Federal Rule of Bankruptcy Procedure 9033(b), Objections to the Report would be due on February 14, 2011.

5. Bankruptcy Rule 9033(a) provides in relevant part that “[i]n non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusions of law.” Bankruptcy Rule 9033(b) provides that objections to such proposed findings of fact and conclusions of law must be filed within 14 days.

6. On the one hand, this Court states that it has core jurisdiction (*Memorandum Opinion*, p.1, n.1), so it appears that Bankruptcy Rule 9033 should not apply. On the other hand, this Court has issued proposed findings of fact and conclusions of law. The only Bankruptcy Rule that addresses proposed findings of fact and conclusions of law is Rule 9033. Accordingly, there is concern that a failure to timely file objections pursuant to Rule 9033 could be used to argue that Movants waived such objections.

7. There is no equivalent in the Bankruptcy Rules to Federal Rule of Civil Procedure 77(b)(2), which sets for the procedure for objecting to proposed findings of fact and conclusions of law issued by a magistrate judge.

8. The District Court has scheduled a status conference in this matter for Wednesday, February 16, 2011 at 10:00 a.m., two days after the deadline to file Objections under Rule 9033 or a Notice of Appeal under Rule 8002.

9. Pursuant to Bankruptcy Rules 8002(c) and 9033(c), the bankruptcy judge may for cause extend the time for filing an appeal or objections up to 21 days after the expiration of the time for filing a notice of appeal or objections.

10. This request is being made before the time for filing an appeal or objections has expired.

11. Movants believe that it would promote judicial economy and reduce expense and uncertainty for the parties if this Court extends, to the extent applicable: (a) the deadline under Rule 8002(c) to appeal from the Memorandum Opinion and Recommended Findings; (b) the deadline under Rule 9033(c) to object to the Memorandum Opinion and Recommended Findings; and (c) any other applicable deadline(s) for the filing of objections to the Memorandum Opinion and Recommended Findings.

12. The brief extension of time requested hereby will not unduly delay the proceedings in this case.

13. This proposed extension will also allow the District Court to establish its own deadlines with respect to objections to or appeals from the Memorandum Opinion and Recommended Findings without any party being prejudiced by the fact that the District Court's status conference was scheduled for slightly more than 14 days after this service of the Memorandum Opinion and Recommended Findings.

WHEREFORE, Movants respectfully request that this Court grant an extension of time until Monday, February 28, 2011 to file objections to or to appeal from the Memorandum Opinion and Recommended Findings.

February 10, 2011

Respectfully submitted,

/s/ Michael A. Shiner

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